

FILED
JUN 11 2009
By PATRICK E. DUFFY, CLERK
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JAMES LEE LARSON,)	CV 09-26-H-DWM
)	
Petitioner,)	
)	
vs.)	ORDER
)	
WARDEN MIKE MAHONEY;)	
ATTORNEY GENERAL of the)	
STATE of MONTANA,)	
)	
Respondents.)	

Petitioner James Larson filed this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. United States Magistrate Judge Keith Strong entered Findings and Recommendation on May 19, 2009 and recommended dismissing Larson's petition because it is an unauthorized second petition. Petitioner did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This

Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Larson previously filed habeas petitions which were dismissed. The current petition challenges the same conviction as earlier petitions. Judge Strong found that Larson did not have jurisdiction to file the current petition because he has not received leave from the Ninth Circuit Court of Appeals. See 28 U.S.C. § 2244(b)(3). After a review of Judge Strong’s Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendation (dkt #2) are adopted in full. Larson’s Petition (dkt #1) is DISMISSED for lack of jurisdiction.

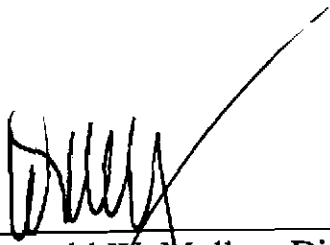
IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

The Clerk of Court is direct to enter, by separate document, a judgment of dismissal.

The Clerk of Court is further directed to have the docket reflect that the Court certifies pursuant to Fed. R. App. P. 24(a)(3)(A) that any appeal of this

decision would not be taken in good faith.

Dated this 11th day of June, 2009.



Donald W. Molloy, District Judge
United States District Court

